

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

RHONDA THOMAS AND BRYANT THOMAS,  
individually and on behalf and as next of kin and  
guardians of their daughters K.T. AND L.T.,

Plaintiffs,

vs.

No. 1:20-cv-1176

SANDIA PREPARATORY SCHOOL,

Defendant.

**NOTICE OF REMOVAL**

COMES NOW Defendant, Sandia School, d/b/a Sandia Preparatory School (hereinafter, “Sandia”), by and through its undersigned counsel of record, and hereby removes this action from the Second Judicial District, Bernalillo County, New Mexico, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446. As grounds for the relief requested herein, Sandia states as follows:

**I. PARTIES AND PROCEDURAL HISTORY**

1. Plaintiffs commenced this action on October 5, 2020, by filing their Complaint for Damages (“Complaint”) in the State of New Mexico Second Judicial District Court, Cause No. D-202-CV-2020-05597. *See* Complaint, attached hereto as **Exhibit A**.

2. The Complaint names Sandia as the sole defendant in this action.

3. As of the date of Sandia’s Notice of Removal, a Summons had been issued, and service was accepted on October 12, 2020. *See* **Exhibit B** (acceptance of service).

4. The Complaint alleges that while Plaintiffs’ minor children were enrolled in Defendant’s school, Defendant failed to accommodate certain disabilities from which Plaintiffs claim their minor children, K.T. and L.T., suffer. *See* Ex. A at, e.g., ¶¶ 47, 53, 86, 89 and 119.

Plaintiffs have sued Defendant for violations of the Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.* (Complaint at ¶¶ 272-311), breach of contract (*id.* at ¶¶ 92-115), breach of the duty of good faith and fair dealing (*id.* at ¶¶ 116-136), promissory estoppel (*id.* at ¶¶ 137-166), fraud (*id.* at ¶¶ 167-200), negligent misrepresentation (*id.* at ¶¶ 201-238), “negligence/*respondeat superior*” (*id.* at ¶¶ 239-252), negligent training and supervision (*id.* at ¶¶ 253-260), and “battery/*respondeat superior*” (*id.* at ¶¶ 261-271).

## **II. GROUNDS FOR REMOVAL**

5. A defendant may remove any civil action brought in a state court for which the District Courts of the United States have original jurisdiction to the federal district court encompassing the place in which the action is pending. 28 U.S.C. § 1441(a). Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over this case by reason of a federal question, because Plaintiffs have brought claims under the federal Americans with Disabilities Act.

6. Pursuant to 28 U.S.C. § 1367, the district court has supplemental jurisdiction over Plaintiffs’ state-law-based causes of action because they are closely related to the claims within the Court’s original jurisdiction, and form part of the same case or controversy.

## **III. DEFENDANT’S NOTICE OF REMOVAL IS TIMELY**

7. 28 U.S.C. § 1446(b)(1) provides that the “notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has been filed in court and is not required to be served on the defendant, whichever period is shorter.” Sandia was served with the Complaint on October 12, 2020; accordingly, this Notice is timely if filed on or before November 11, 2020. *See* Ex. B (acceptance of service).

**IV. DEFENDANT HAS COMPLIED WITH ALL REMOVAL PROCEDURES**

8. Defendant has complied with the procedural requirements for removal set forth in 28 U.S.C. § 1446. As is noted above, in accordance with 28 U.S.C. § 1446(b), the notice of removal was timely filed within 30 days after Defendant's receipt of the initial pleading setting forth the claim for relief upon which Plaintiffs' action against it is based.

9. The United States District Court, District of New Mexico, encompasses the Second Judicial District Court, Bernalillo County, New Mexico, the county in which the state-court action is now pending, and thus is the proper venue to which to remove this action pursuant to 28 U.S.C. § 1441(a).

10. Plaintiffs' Complaint names only one party defendant, for which reason no further service of process is anticipated. *See* Ex. A.

11. Pursuant to 28 U.S.C. § 1446(d), promptly upon filing this Notice of Removal, Sandia will provide written notice of this Notice of Removal to Plaintiffs, and file a copy of this Notice with the Clerk of the Circuit Court of the Second Judicial District Court, Bernalillo County, New Mexico.

12. This Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

13. Pursuant to D. N.M. LR-CIV 81-1(a), Sandia will submit copies of the records and proceedings from the state-court action, if any, within twenty-eight (28) days of the filing of this Notice of Removal.

WHEREFORE, Sandia School hereby removes the instant action from the Second Judicial District Court, Bernalillo County, New Mexico to the United States District Court for the District of New Mexico, and respectfully requests that the Court exercise jurisdiction over this action.

Respectfully submitted,

CIVEROLO, GRALOW & HILL, P.A.

By /s/ David M. Wesner

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 11, 2020, a true copy of the foregoing *Notice of Removal* was filed with the Court's electronic filing system and served by that system on all counsel of record, as well as an additional courtesy copy being provided by U.S. mail to Plaintiffs as follows:

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/s/ David M. Wesner

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